

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

January 26, 2005

**I.
PLEDGE OF
ALLEGIANCE**

Chair Lalwani called the meeting to order at 8:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Azevedo, Galang, Garcia, Lalwani, Mandal, Mohsin and Williams
Absent: None
Staff: Carrington, Duncan, Heyden, Lindsay, and Rodriguez

**III
PUBLIC FORUM**

Chair Lalwani invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers from the audience.

**IV.
APPROVAL OF MINUTES
January 12, 2005**

Chair Lalwani called for approval of the minutes of the Planning Commission meeting of January 12, 2005.

Mr. Lindsay noted that staff modified the minutes on page 4 with the following changes:

Ms. Pereira also brought to the Commission's attention a change in condition no. 9 which reads as follows:

9. This use permit approval does not allow for any day care facilities or a K-12 school as defined by the Education Code of the State of California to operate at this site. (P)

Motion to approve the minutes with the changes.

M/S: Mandal/Azevedo

AYES: 7

NOES: 0

**V.
ANNOUNCEMENTS**

Mr. Lindsay announced that the Commission received the new Planning Commission Subcommittee Rotation schedule for the rest of the calendar year. Staff also provided the Commission the new Planning Commissioners Handbook published by the League of California Cities and included a red folder with supplemental city information that include bylaws, relevant resolutions, and demographic data. He also noted that the League's 2005 Planners Institute will be held April 13-15 in Pasadena. To stay within the training budget only five Commissions can attend, so the Chair suggested that the newer Commissioners be given first priority. The Commissioners were asked to RVP to Veronica Rodriguez at 408-586-3271.

Chair Lalwani mentioned that there will be a book reading by a Japanese Author on February 12th at the Indian Community Center called "Epitaph for a peach" hosted by the Silicon Valley Manufacturing Group.

**VI.
CONFLICT
OF INTEREST**

Chair Lalwani noted she would be abstaining from Item No. 1, Indian Community Center at 525 Los Coches.

No other commissioners identified a conflict of interest.

**VII.
APPROVAL OF
AGENDA**

Chair Lalwani called for approval of the agenda.
The Commission had no changes.

Motion to approve the agenda.

M/S: Williams/Mandal

AYES: 7

NOES: 0

**VIII.
CONSENT CALENDAR
Consent Item No. 2**

Chair Lalwani asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

Mr. Lindsay brought to the Commission's attention public correspondence relating to Item No. 2 that staff received. Staff still felt that the item should remain on the consent calendar.

Chair Lalwani opened the public hearing on Consent Item No. 2.

There were no speakers from the audience.

Motion to close the public hearing on Consent Item No. 2

M/S: Mohsin/Galang

AYES: 7

NOES: 0

Motion to approve Consent Item No. 2.

M/S: Mohsin/Galang

AYES: 7

NOES: 0

Close Public Hearing

***2 MINOR TENTATIVE PARCEL MAP NO. MI2004-4:** Request approval for a tentative parcel map to subdivide a 19.49-acre parcel to create a 7.51-acre parcel and a 11.98-acre parcel located at 1100 Cadillac Court and 380 Fairview Way (APN: 022-38-016), zoned "MP" Industrial Park (PJ #3185). Applicant: Grubb & Ellis. Project Planner: Cindy Hom, (408) 586-3284. (*Recommendation: Approval with Conditions*)

**IX.
PUBLIC HEARING**

**1. USE PERMIT NO.
UP2004-12, "S" ZONE
APPROVAL
AMENDMENT NO.
SA2004-107 AND
ENVIRONMENTAL
IMPACT ASSESSMENT
NO. EA2004-11**

Chair Lalwani left the Council Chambers at 8:08 p.m.

Kim Duncan, Junior Planner, presented Item No. 1, a request for approval to operate a community center in an existing 38, 743 square foot industrial building with uses to include administrative offices, fitness center, library, classrooms, youth and senior programs, after school tutoring, medical services, auditorium for events, and cafeteria/kitchen, as well as building and site modifications, located at 525 Los Coches Street. Ms. Duncan recommended the commission to adopt the Mitigated Negative Declaration and approve with conditions. Ms. Duncan also recommended the following changes to conditions no. 1 and 3:

- 1. This Use Permit No. UP2004- 12 approval is for an approximately 38,743 square foot community center in accordance with the plans approved on January 26, 2005 and as modified by the conditions within this approval. Any modification to the project as proposed will require a use permit amendment by the Planning Commission. (P)*
- 3. The proposed project, as conditioned, is consistent with the Zoning Ordinance in terms of use, which is conditionally permitted in the MP district. In addition, increasing the parapet height to 36 feet will not be detrimental to light, air or privacy of any other structure because the building side and rear setbacks exceed development standards, thereby allowing more open space between buildings.*

Commissioner Galang asked what type of medical services would be offered at the facility. Ms. Duncan responded that they will provide preventive type screening and that the applicant could answer in more detail.

Commissioner Galang mentioned that under hazardous materials in the staff report, chemicals could escape within 30 minutes and cause irreversible health damage and asked for clarification. Mr. Lindsay noted that irreversible health damage means any damage you cannot recover from.

Commissioner Galang noted the staff report stated that chlorine is a powerful irritant by contact or inhalation and could cause irritation of the skin and pulmonary damage. He asked what is an instantaneous release of toxic gases. Mr. Lindsay replied that an instantaneous release is when the gas immediately goes out, the air model predicts a worst case scenario of chemical releases from the project site. He also noted that the applicant and their consultant could answer in more detail.

Commissioner Mandal asked if events that will happen during the daytime or evening would impact the number of parking spaces because the applicant is borrowing spaces from other businesses in the area. Ms. Duncan replied that the applicant is not proposing any events during the week besides Friday evenings and all day Saturdays and Sundays.

Commissioner Mandal asked if there are any residential homes within 300 feet of the property and Ms. Duncan replied, "Yes".

Commissioner Mandal asked if the fire department would have emergency plans and how would they protect the homes in the area. Ms. Duncan replied that businesses are required to have an hazardous materials business plan and they are on file at the Fire Department.

Vice Chair Garcia invited the applicant to give a presentation.

Anil Godhwani, Co-founder and CEO of the India Community Center stated that their mission is to foster the Indian community center with emphasis of the future generation. The 20, 000 sq. ft. India Center is the largest of its kind and last year and offered 500-700 programs. ICC does have a smaller center in Sunnyvale and has 29 part-time and full-time staff that takes care of 2,000 members. The center is financially supported by membership fees, programs, classes and corporate sponsors and is fortunate to have many members on the board of trustees. Mr. Godhwani continued to show the Commission and audiences a presentation of pictures taken at the community center that include the following activities: parent and me program, yoga and mediation classes, dance programs, fitness center, summer camp, birthday parties yoga class for seniors, free health fairs, free legal advice, mixed martial arts, karaoke, global relief and math and science classes. He also noted that every quarter, the facility has a talent showcase highlighting the best students, we have corporate sponsors. He summarized that the facility has been in Milpitas for two years and has participation of over 1,000 people becoming members. The Center hopes to continue the work.

Amor Santiago, Applicant, mentioned that he just joined in November and thanked City staff for all of their efforts. He added that the Center participates in the Global Village booth at the fourth of July event, voter registration at the November election, provides tours for the Chamber of Commerce, Rotary Club and City of Milpitas staff. The facility is confident that the neighbors recognize their value and don't believe it would impact them directly and also appreciates the diligence of the Fire Department for the new procedures for safety and hazardous materials which include adding sensors in the facility.

Commissioner Williams is happy that he was on the Commission when the India Community Center first opened and commented on the growth of the center. He asked if the various community services that the center is providing in regards to parking issues, will also include the Sunnyvale facility. Mr. Santiago replied that when the facility does have an event, the draw is not only from the Milpitas membership but also from the bay area including San Jose and Livermore. He noted that these activities would be limited to Friday, Saturday and Sunday.

Commissioner Galang asked what type of medical screening would be provided. Mr. Santiago noted that he is a trained podiatrist and he along with other doctors will be offering a place for low income residents that have no insurance to come for primary care such as minor colds and flu's. Anything more serious, they will refer them to a hospital. Doctors will volunteer their time three evenings a week from 6:00 to 9:00 p.m.

Commissioner Galang asked if the facility will offer flu shots. Mr. Santiago said the facility will offer flu shots to the homeless and to those who are not able to afford the money to do that.

Commissioner Galang is concerned about the exposure of two chemicals, chlorine and hydrogen in case of an accidental spill. He asked what procedures will the facility have in place.

Mr. Santiago noted that the facility has chemical sensors in the facility in case of an accidental release. The ventilation system would be immediately shut off and members could not leave the building. There would be an automated message telling members not to leave the building and members would have to shelter in place. The Fire Department would be automatically notified of a spill and wait for evacuation and when it all is clear staff will notify all clients and members. He also noted that all members and parents will be required to sign an acknowledgement form of potential chemical spills.

Commissioner Galang also suggested that the facility have an emergency kit on site in case of injuries.

Commissioner Mohsin noted that the India Community Center has members that speak various languages and asked what language would the emergency message be in. Mr. Godhwani said the predominate language is English. so the emergency message will be in English.

Mr. Lindsay noted that staff did address Commissioner Mohsin's concern about the language from the last meeting and applied it to Condition no. 8 which requires the pre-recorded message to be in English and other dominate language of the facility.

Commissioner Mohsin complimented the Center and asks the staff to keep up the good work.

Commissioner Mandal asked often is the risk assessment updated. Ms. Duncan replied that the Fire Department requires it to be updated annually.

Commissioner Azevedo noted that he was impressed with the facility and told the staff to keep up the good work.

Vice Chair Garcia asked if the staff is going to retain the existing facility and Mr. Santiago said no.

Vice Chair Garcia mentioned his curiosity of how the annual fire drill is going on. He echoed fellow commissioners comments about the facility.

Vice Chair Garcia opened up the public hearing:

Naranjan Gupta, Resident, stated that it is a wonderful facility and that he goes there six times a week for Yoga classes.

Motion to close the public hearing.

M/S: Williams/Azevedo

AYES: 6

NOES: 0

Commissioner Williams commented that being a member of quality and safety teams, he has first hand experience and fully understands what the facility is going through as far as preparation for hazardous materials. Any company that has materials has to go through a rigorous process of preparing documents and submitting them annually to the Fire Department. The fact that the India Community Center is having to put in a monitoring system, taking into consideration that there is a hospital nearby and they do not even have a detection system, is saying that the project is the first project to have sensors in place. He commended the facility for adopting the requirements and for the services they are providing.

Close the Public Hearing

Commissioner Galang asked if the emergency kit could be included as part of the mitigation measures. Mr. Lindsay noted that it has been included. The emergency action plan has to be approved by the Fire Department and the Fire Department inspects the facility to ensure that the proper materials are on site given the nature of the chemicals around them.

Commissioner Galang thanked the facility for giving him a tour this morning and he thanked everyone and for the volunteers giving their time to the non-profit organization for the good cause.

Commissioner Mandal thanked everyone for their efforts and the good project. He asked staff if the conditions in the report include the parking space requirements. Mr. Lindsay said yes, and to require the off site parking is a condition of approval and the applicant is required to provide the parking spaces before occupancy of the building. Also, staff requires that agreements be recorded on the property's providing the parking so even if tenants and owners change, that agreement runs with the property.

Motion to approve Use Permit No. UP2004-12, "S" Zone Approval Amendment No. SA2004-107 and environmental impact assessment No. EA2004-22 with modified conditions nos. 1 and 3 noted above.

M/S: Williams/Azevedo

AYES: 6

NOES: 0

ABSTENTIONS: 1 (Lalwani)

Vice Chair Garcia turned the gavel over to Chair Lalwani at 8:55 p.m.

**X
NEW BUSINESS
2. PLANNING
COMMISSION UPDATE
ON THE BROWN ACT
AND CONFLICT OF
INTEREST**

City Attorney Faubion stated that the Brown Act is the State of California's open meeting law which states that when a person is doing business of the city it should be in a public forum as long as the meeting is open, the public could come and see what is going on. The Brown Act defines a meeting as consisting of majority of the decision making body. City Attorney Faubion urge the Commission to think about less obvious congregations that could be described as a meeting. Some exceptions could be a purely social gathering or being at the high school football game or debate club and it happens that four Commissioners have kids at the school. It is probably not a meeting unless the Commissioners decide to talk about City of Milpitas Planning Commission business and then are subject to the Brown Act. City Attorney Faubion advised that unless the Commission is sitting at a formal forum that is noticed, it is wise to avoid talking about city business. If the Commission would like to agendize an item for discussion, just talk to staff.

City Attorney Faubion explained that the agenda is required to be posted 72 hours ahead of time in a prominent and consistent place for the public. Special meetings and emergency meetings, have different requirements but typically don't apply to the Planning Commission. The agenda requires brief descriptions of the business. The Brown Act wants to give the public a basic idea of what business will be discussed.

City Attorney Faubion also explained that ex-party contacts are contacts that are made on the business that will go before the Commission however not in the public forum. In the last part of the agenda, she noted that a lot of the members were able to go out and take a tour of the India community center and got a good idea about what is being proposed. However, the rest of the Commission doesn't have an idea about what is being seen, so if the rest of the commission doesn't have access to ex-party contacts, it is best to disclose them for the record so everyone has the benefit of the information and can make their decisions with the same information. Also the Planning Commission Bylaws discourages ex-party contacts.

City Attorney Faubion noted that in a conflict of interest, a decision maker should not participate in a decision if they have a financial interest. The law assumes that if there is a project within 500 feet of the property owner, there is a conflict of interest. She noted that staff prepares diagrams for the Commission as a quick reference guide.

Commissioner Azevedo noted that he hasn't received a diagram. Mr. Lindsay responded that the maps are based on the information on Form 700.

In response to Commissioner Galang's question, City Attorney Faubion noted that if a Commissioner is renting month to month it is not considered financial interest, however if they are leasing, it is considered a conflict of interest. =

City Attorney Faubion noted that the four elements of conflict of interest that are evaluated are: 1) governmental decision, 2) whether the decision on an economic interest is reasonably foreseeable, 3) material financial effect, 4) distinguishable effect. If there is a conflict of interest, the law requires that the Commissioner disclose the information on record and when the item is called, the Commissioner steps down and leaves the room. The only exception is where there is a conflict item on the consent calendar. If there is an item on the consent calendar, the Commissioner still needs to disclose it however they do not need to leave the dais.

Commissioner Mandal asked when is the information disclosed. Attorney Faubion noted that there is a place on the agenda under the conflict of interest item.

Attorney Faubion advised the Commission to call the City Attorney's office if they are not sure they have a conflict of interest. They could also call the Fair Political Practice Commission hotline. If the City Attorney's office is not sure, then a formal advice letter would be drafted to the FPPC. A response could take several months, however an opinion from the FPPC is the only way to guarantee immunity. The liability is on the decision makers and it affects the city because it has the potential to cause a decision to be invalidated and is something to take seriously.

Attorney Faubion stated that common law conflict of interest states a Commissioner needs to make a fair decision about a project. For example, if an applicant happens to be related to a Commissioner it wouldn't be a fair decision. In those cases, the Attorney advises the Commission to declare there is a conflict of interest and step down when the item comes up.

Commissioner Galang asked what happens if there is a conflict of interest on subcommittee items. Attorney Faubion noted that conflict of interest law applies to Subcommittee items too. Mr. Lindsay added that in those circumstances, a Commissioner could call the alternate to take his place.

Chair Lalwani asked what happens when a Commissioner receives phone calls from residents that want to talk about an upcoming agenda item.. Attorney Faubion advised that it would fall under the purview of ex-party contact and each Commissioner needs to try and see how much contact they want to have with an applicant. She suggested that the Commissioner limit the conversation and disclose the information at the meeting.

XI. ADJOURNMENT

The meeting was adjourned at 9:20 p.m. to the next regular meeting of February 9, 2005.

Respectfully Submitted,

James Lindsay
Acting Planning Manager

Veronica Rodriguez
Recording Secretary